

TOWN OF BRAINTREE

IN COUNCIL

ORDER NO: 10 045

DATE: May 10, 2010

ORDERED: Councilor Leland Dingee

TITLE 9, CHAPTER 9: PUBLIC PEACE, MORALS AND WELFARE

HIS HONOR, MAYOR SULLIVAN HAS SUBMITTED TO THE BRAINTREE TOWN COUNCIL THE MUNICIPAL CODE, TITLE 9, CHAPTER 9 ORDINANCE FOR THE TOWN OF BRAINTREE.

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BRAINTREE THAT A NEW ORDINANCE, TITLE 9, CHAPTER 9-800 SEX OFFENDER RESIDENCY RESTRICTIONS GENERALLY BE ESTABLISHED WITH THE TOWN'S MUNICIPAL CODE.

CHAPTER 9- 800 SEX OFFENDER RESIDENCY RESTRICTIONS

SECTION 9.800.010 - DEFINITIONS

For the purpose of this chapter, the following terms shall have the respective meanings ascribed to them:

- A. **Adult Criminal Level 3 Sex Offender:** A person convicted of a criminal sex offense as defined in G.L. Chapter 6, Section 178C, and designated as a Level 3 Sex Offender by the Massachusetts Sex Offender Registry Board, established and maintained pursuant to G.L. Chapter 6, Section 178D. The Board has determined that these individuals have a high risk to re-offend and that the degree of dangerousness posed to the public is such that a substantial public safety interest is served by active community notification.
- B. **Day Care Center:** Any establishment, whether public, private or parochial, which provides care for children and is registered with and licensed by the Commonwealth of Massachusetts Department of Early Education and Care and is located within the Town of Braintree.
- C. **Elderly Housing Facility:** A building or buildings on the same lot containing four or more dwelling units restricted to occupation by households having one or more members fifty-five years of age or older or which provides a group residence for individuals over the age of fifty-five and located within the Town of Braintree.

- D. **Establishing a Residence:** To set up or bring into being a dwelling place or an abode where a person sleeps, which may include more than one location, and may be mobile or transitory, or by means of purchasing real property or entering into a lease or rental agreement for real property, including a renewal or extension of a prior lease or rental agreement, whether in writing or verbal.
- E. **GIS:** The Town of Braintree's geographic information system.
- F. **Loiter:** To remain in or around a school, day care center, park, recreational facility open to the public, elderly housing facility, or school bus stop for more than ten (10) minutes.
- G. **Park:** Any public land located within the Town of Braintree that has been designated for active or passive recreational or athletic use by the Town of Braintree, the Commonwealth of Massachusetts, or other governmental subdivision.
- H. **Recreational Facility Open to the Public:** A playground, forest, conservation area, jogging trail, running path, hiking trail, pond, beach, water park, wading or swimming pool, athletic field, hockey rink, golf course, miniature golf business, arcade, laser tag establishment, Boys and Girls Club(s), skate park, dance or gymnastic studio, movie theater, martial arts school, whether publicly or privately owned, to which the public has a right of access as an invitee and which is located within the Town of Braintree.
- I. **School:** A licensed or accredited public or private school or church school that offers instruction in pre-school, including a licensed daycare or other business permitted as a school by the Town of Braintree, or any of grades kindergarten through high school, which are located within the Town of Braintree. This definition shall not include private residences in which students are taught by parents or tutors.
- J. **School Bus Stop:** Any area designated by the Braintree School Department or by any private or parochial school within the Town of Braintree as a school bus stop.
- K. **Residence, Temporary:** A place where a person lives, abides, lodges, or resides for less than five consecutive days or fourteen days in the aggregate during any calendar year, but shall not include residence at a hospital or other healthcare or medical facility for less than 14 consecutive days.
- L. **Residence, Permanent:** A place where a person lives, abides, lodges, or resides for fourteen (14) or more consecutive days.

SECTION 9.800.020 - RESIDENCY RESTRICTIONS

- A. It shall be unlawful for any person classified as an Adult Criminal Level 3 Sex Offender, for so long as such person is so classified, to establish a temporary or permanent residence or any other living accommodations within the Town of Braintree which is within one thousand five hundred (1,500) feet of the property on which any school, day care center, park, elderly housing facility, designated as a school bus stop, Division of Elder Services on Cleveland Avenue, or recreational facility open to the public is located.

- B. It shall be unlawful for a property owner to knowingly let, lease, or rent any place, building, structure, or part thereof, as a temporary or permanent residence to any person who is prohibited from establishing such residence pursuant to Section 9.800.020, paragraph A, if such place, building, structure, or part thereof is located within the Town of Braintree and within one thousand five hundred (1,500) feet of the property on which any school, day care center, park, elderly housing facility, designated as a school bus stop, Division of Elder Services on Cleveland Avenue, or recreational facility open to the public is located.
- C. The one thousand five hundred (1,500) feet restriction shall be measured in a straight line from the nearest property line upon which the house, apartment complex, condominium complex, motel, hotel or other residence is located to the property line of the nearest school, day care center, park, elderly housing facility, designated as a school bus stop, Division of Elder Services on Cleveland Avenue, or recreational facility. Distances will be taken from the Town's GIS system. The Town's GIS system shall be presumed accurate and shall be evidence of a violation.
- D. Exceptions: A person classified as an Adult Criminal Level 3 Sex Offender, for so long as such person is so classified, residing within the Town of Braintree and within one thousand five hundred (1,500) feet of the property on which any school, day care center, park, elderly housing facility, designated as a school bus stop, Division of Elder Services on Cleveland Avenue, or recreational facility open to the public is located does not commit a violation of this residency restriction if any of the following apply:
1. The person classified as an Adult Criminal Level 3 Sex Offender, for so long as such person is so classified, established the permanent residence prior to the effective date of this Ordinance, and
 - a. Permanent residence was established by purchasing the real property where the residence is established, as long as the person classified as an Adult Criminal Level 3 Sex Offender, for so long as such person is so classified, continues to reside in, and does not move to another restricted location in the Town of Braintree different from the permanent residence established prior to the effective date of this Ordinance, or
 - b. Permanent residence was established through a valid, fixed-term, written lease or rental agreement, executed prior to the effective date of this Ordinance, as long as the person classified as an Adult Criminal Level 3 Sex Offender, for so long as such person is so classified, continues to reside within, and does not move to another restricted location in the Town of Braintree different from the permanent residence established prior to the effective date of this Ordinance, or
 - c. Permanent residence was established through a verbal lease or rental agreement at the will of the landlord, as long as the person classified as an Adult Criminal Level 3 Sex Offender, for so long as such person is so classified, continues to reside within said residence, and does not move to another restricted location within the Town of Braintree different from the permanent residence established prior to the effective date of this Ordinance.

2. The Registered Sex Offender is a minor living with his or her parent(s) or legal guardian(s), and said parent(s) or legal guardian(s) established a permanent residence pursuant to Section 9.800.020.D

SECTION 9.800.030 – EXCEPTION FOR CHANGES TO THE USE OF PROPERTY

Changes to the use of property resulting in the construction, designation, establishment or location of a school, day care center, park, elderly housing facility, school bus stop, or recreational facility open to the public within one thousand five hundred (1,500) feet of an Adult Criminal Level 3 Sex Offender's registered address which occur after an Adult Criminal Level 3 Sex Offender establishes temporary or permanent residency at such address shall not form the basis for finding that a criminal sex offender is in violation of this Chapter.

SECTION 9.800.035 – FORFEITURE OF EXCEPTION FOR ESTABLISHED RESIDENTS

If, either after the effective date of this Ordinance or after a new school, day care center, park, elderly housing facility, school bus stop, or recreational facility open to the public is located within one thousand five hundred (1,500) feet of an Adult Criminal Level 3 Sex Offender's registered address, a conviction of another sex offense is issued by a court against an Adult Criminal Level 3 Sex Offender, who was otherwise enjoying an exception to this Ordinance under Section 9.800.030, the Adult Criminal Level 3 Sex Offender shall immediately forfeit the exception afforded by Section 9.800.030 and be required to comply with Section 9.800.020 of this Ordinance.

SECTION 9.800.040 - NOTICE TO MOVE

With the exception as stated in Section 9.800.030 above, a person classified as an Adult Criminal Level 3 Sex Offender, for so long as such person is so classified, who establishes a residence on a permanent or temporary basis within one thousand five hundred (1,500) feet of any school, day care center, park, elderly housing facility, school bus stop, or recreational facility open to the public following passage of this Ordinance, shall be deemed to be in violation of this section and shall, within sixty (60) days of receipt of written notice from the Braintree Police Department of the Registered Sex Offender's noncompliance with this Ordinance, move from said location to a new location, but said new location may not be within one thousand five hundred (1,500) feet of any school, day care center, park, elderly housing facility, school bus stop, or recreational facility open to the public within the Town of Braintree. The first day following the sixty day (60) written notice shall be considered the first violation. Following the first violation, every day that the person classified as an Adult Criminal Level 3 Sex Offender, for so long as such person is so classified continues to reside within the Town of Braintree and within one thousand five hundred (1,500) feet of any school, day care center, park, elderly housing facility, school bus stop, or recreational facility open to the public shall be considered a separate violation. Further, it shall be a violation each day that an Adult Criminal Level 3 Sex Offender shall move from one location within the Town of Braintree to another that is within one thousand five hundred (1,500) feet of any school, day care center, park, elderly housing facility, school bus stop, or recreational facility open to the public.

SECTION 9.800.045 – SAFETY ZONES

A. PROHIBITIONS

1. A person classified as an Adult Criminal Level 3 Sex Offender, for so long as such person is so classified, is prohibited from entering or loitering upon the premises of a school or day care center unless previously authorized in writing by the school administration or day care center owner.
2. A person classified as an Adult Criminal Level 3 Sex Offender, for so long as such person is so classified, is prohibited from entering or loitering upon the premises of an elderly housing facility unless previously authorized in writing by the on-site manager of the elderly housing facility.
3. A person classified as an Adult Criminal Level 3 Sex Offender, for so long as such person is so classified, is prohibited from entering or loitering upon the premises of any park or recreational facility open to the public.

B. EXCEPTIONS

1. The prohibitions defined in Section 9.800.045.A.1 through A.3 shall not be construed or enforced so as to prohibit a person classified as an Adult Criminal Level 3 Sex Offender, for so long as such person is so classified, from exercising his or her right to vote in any federal, state or municipal election, or from attending any religious service.
2. The prohibitions defined in Section 9.800.045.A.1 through A.3 shall not apply to the place of residence of a person classified as an Adult Criminal Level 3 Sex Offender, for so long as such person is so classified, when such residence has been accepted under Section 9.800.030.

SECTION 9.800.050 – PENALTIES

Pursuant to General Laws Chapter 40, Section 21D, the following penalties may be imposed by the Town of Braintree Police Department for violation of this Ordinance:

- A. First Offense by Registered Sex Offender: Non-criminal fine of \$150.00 and/or notice to person that s/he has thirty (30) days to move.
- B. Subsequent Offense by Registered Sex Offender: Non-criminal fine of \$300.00 and notification to offender's landlord, parole officer and/or probation officer, and the Commonwealth's Sex Offender Registry Board that the Sex Offender has violated a municipal ordinance.
- C. A property owner's failure to comply with this Ordinance shall subject said property owner to a non-criminal fine of \$100.00 per offense. Each day that a property owner fails to comply with this Ordinance shall constitute a separate offense.

SECTION 9.800.060 – ENFORCEMENT

The Braintree Police Department shall be charged with the enforcement of this Ordinance.

SECTION 9.800.070 – EFFECTIVE DATE

This Ordinance shall become effective immediately upon its passage.

SECTION 9.800.080 – SEVERABILITY

If any clause, sentence, paragraph, section or part of this Ordinance shall for any reason be adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalidated, such judgment shall not affect or invalidate the remainder of this Ordinance, and it shall be construed to have been the legislative intent to enact this ordinance without such unconstitutional or invalid parts therein.

YEAS: Bowes, Clifford, DeNapoli, Dingee, Joyce, Kokoros, Mullaney, Powers, Ryan
NAYS: Bowes, Clifford, DeNapoli, Dingee, Joyce, Kokoros, Mullaney, Powers, Ryan
ABSENT: Bowes, Clifford, DeNapoli, Dingee, Joyce, Kokoros, Mullaney, Powers, Ryan

Passed in Council: December 7, 2010
Presented to Mayor: December 8, 2010
A True Copy, Attest:

Date Approved



Joseph F. Powers, Town Clerk

Joseph C. Sullivan, Mayor

Council Order 10 045 has not been signed nor returned by the Mayor to the Town Council as stipulated in the Braintree Charter; Section 3-7: Approval of Mayor, Exception (Veto), and is considered approved and in force (12/22/10).